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10 Cardiff Chamber of Commerce, Inc.
11 a/k/a Cardiff 101 Main Street Assoc.

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 CARDIFF CHAMBER OF
15 COMMERCE, INC., also known as
16 CARDIFF 101 MAIN STREET
17 ASSOCIATION, a California
18 Corporation

19 Plaintiff,

20 v.

21 STEVE LEBHERZ, an individual;
22 THE CARDIFF KOOK RUN, an
23 entity of unknown type; DOES 1
24 through 50, inclusive,

25 Defendant.

Case No. '16CV0180 H BLM

**COMPLAINT FOR
COPYRIGHT INFRINGEMENT
(17 U.S.C. §501)**

DEMAND FOR JURY TRIAL

26 Plaintiff Cardiff Chamber of Commerce, Inc., also known as Cardiff 101
27 Main Street Association (“Plaintiff” or “Cardiff 101”), by its attorneys, sues
28 Defendants Steve Lebherz and the Cardiff Kook Run, and Does 1-25, and alleges
as follows:

JURISDICTION AND VENUE

1. This matter arises under the United States Copyright Act of 1976, as

1 amended, 17 U.S.C. §§ 101 et seq. (the “Copyright Act”).

2 2. This Court has subject matter jurisdiction over this action pursuant to
3 28 U.S.C. § 1331 (federal question) and 28 U.S.C. §1338 (patents, copyrights,
4 trademarks and unfair competition.)

5 3. This Court has personal jurisdiction over each Defendant pursuant to
6 Cal. Civ. Proc. Code §410.10 because each Defendant committed the tortious
7 conduct alleged in this Complaint in the State of California, and each Defendant
8 resides in the State of California, and/or (b) each Defendant has engaged in
9 continuous and systematic business activity in the State of California.

10 4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and
11 (c), because: (i) a substantial part of the events or omissions giving rise to the
12 claims occurred in this District; and, (ii) a Defendant resides (and therefore can be
13 found) in this District and all of the Defendants reside in this State; additionally,
14 venue is proper in this District pursuant 28 U.S.C. § 1400(a) (venue for copyright
15 cases) because each Defendant or each Defendant's agent resides or may be found
16 in this District.

17 **THE PARTIES**

18 5. Plaintiff is a California corporation organized and existing under the
19 laws of the State of California and has its principal place of business located at
20 2139B Newcastle Avenue, Cardiff, California 92007

21 6. Plaintiff is the registered copyright owner for the sculptural work in
22 question.

23 7. Defendant Steve Lebherz (“Lebherz”) is an individual residing in the
24 County of San Diego, State of California. Lebherz is the founder of the Cardiff
25 Kook Run contest.

26 8. Plaintiff is informed and believes and thereon alleges that Defendant
27 The Cardiff Kook Run is an entity of unknown type with its principal place of
28 business in San Diego County, State of California.

9. The names of or capacities of defendants DOES 1 - 50, inclusive, are unknown to Plaintiff who therefore sues said defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the defendants designated herein as a DOE is legally responsible in some manner for the events and happenings referred to herein and legally and proximately caused injury and damages thereby to Plaintiff.

10. At all relevant times, defendants, and each of them, were the agents and employees of each of the remaining defendants, and were at all times acting within the purpose and scope of said agency and employment, and each defendant has ratified and approved the acts of his agent.

FACTUAL BACKGROUND

11. Plaintiff is a non-profit corporation located in Cardiff-by-the Sea, California that works with residents, property owners, business owners, and governmental agencies to preserve and revitalize Cardiff-by-the Sea.

12. Plaintiff is the registered copyright owner of the sculptural work of art titled “Magic Carpet Ride”, which is a statue of a surfer located at the intersection of Highway 101 and Chesterfield Drive in Cardiff, California (the “Infringed Work”). A true and correct copy of Plaintiff’s certificate of copyright registration is attached hereto as **Exhibit A**.

13. Attached hereto as **Exhibit B** is a photograph of the Infringed Work.

14. In or around December 2015 it came to Plaintiff's attention that Defendants, and/or their agents reproduced, distributed, and publicly displayed (and/or caused to be reproduced, distributed, and/or publicly displayed) a substantial portion of the Infringed Work without Plaintiff's authorization in commercial promotions of a foot race contest called the 2016 Cardiff Kook Run, to be held on February 7, 2016.

15. Upon information and belief, Defendants operate the Cardiff Kook

1 Race for profit and charge race participants and entry fee of between \$44 and \$54
2 each.

3 16. Upon information and belief Defendants have unlawfully and without
4 authority used the Infringed Work on no less than 25 signs, a billboard, medals, t-
5 shirts, websites, racing bibs, entry processing forms, and other promotional
6 materials and products for sale. Attached hereto as **Exhibit C** is a compendium of
7 true and correct photographs of some of Defendants' signs incorporating the
8 Infringed Work. Attached hereto as **Exhibit D** is a compendium of true and
9 correct screen shots of Defendants' website and Facebook page promoting the
10 Cardiff Kook Run and using the Infringed Work.

11 17. Defendants' use of a substantial portion of the Infringed Work
12 infringed Plaintiff's copyright. Defendants do not have any license, authorization,
13 permission or consent to used the Infringed Work.

14 18. In fact, On December 15, 2015 Plaintiff notified Defendant Lebherz
15 that he needed to enter a license agreement to use the Infringed Work. Defendant
16 Lebherz refused. Attached hereto as **Exhibit E** is a true and correct copy of
17 Plaintiff correspondence to Lebherz together with his response.

18 19. On January 12, 2016, Plaintiff again provided written notice to
19 Defendant Lebherz that Defendants' use of the Infringed Work constitutes
20 infringement of Plaintiff's rights and demanded payment from Defendants for
21 Defendants' unauthorized use of the Infringed Work. Plaintiff further demanded
22 that Defendants immediately cease and desist from further use of the Infringed
23 Work. Attached hereto as **Exhibit F** is a true and correct copy of Plaintiff's written
24 notice to Defendant Lebherz.

25 20. Although duly demanded, On January 20, 2016 Defendant Lebherz,
26 through his attorney, refused to pay for Defendants' use of the Infringed Work.
27 Defendant Lebherz also refused to discontinue his use of the Infringed Work,
28 writing instead that "[i]f it is any consolation, Steve will no longer use the image of

1 the Cardiff Kook statue after February 7, 2016.” Accordingly, Lebherz’s use of the
2 Infringed Work is knowing and willful. Attached hereto as **Exhibit G** is a true and
3 correct copy of Lebherz’s letter dated January 20, 2016.

4 21. Plaintiff is entitled to injunctive relief and redress for Defendants’
5 willful, intentional and purposeful use and exploitation of the Infringed Work for
6 their own financial benefit with full knowledge that such use constituted
7 infringement of, and was in disregard of, Plaintiff’s rights.

8
9 **FIRST CAUSE OF ACTION**
10 **COPYRIGHT INFRINGEMENT**

11 (Against All Defendants)

12 22. Plaintiff repleads and realleges each and every allegation of paragraphs
13 1 through 20 inclusive, as if specifically pleaded herein.

14 23. Through their conduct as alleged herein, Defendants have infringed
15 Plaintiff’s copyright in the Infringed Work in violation of Section 106 and 501 of
16 the Copyright Act, 17 U.S.C. §§106 and 501.

17 24. Defendants’ acts of infringement are willful, intentional and
18 purposeful, in disregard of and with indifference to Plaintiff’s rights within the
19 meaning of 17 U.S.C. §504(c)(2). (See, **Exhibits E and G**)

20 25. As a direct and proximate result of said infringement by Defendants,
21 Plaintiff is entitled to damages in an amount to be proven at trial.

22 26. Plaintiff is also entitled to Defendants’ profits attributable to the
23 infringement, pursuant to 17 U.S.C. § 504 (b), including an accounting of and a
24 constructive trust with respect to such profits.

25 27. Plaintiff is further entitled to its attorney’s fees and full costs pursuant
26 to 17 U.S.C. § 505 and otherwise according to law.

27 28. As a direct and proximate result of the foregoing acts and conduct,
28 Plaintiff has sustained and will continue to sustain substantial, immediate, and

1 irreparable injury, for which there is no adequate remedy at law. Plaintiff is
2 informed and believes and on that basis alleges that unless enjoined and restrained
3 by this Court, Defendants will continue to infringe Plaintiff's right in the infringed
4 Work. Plaintiff is entitled to injunctive relief to restrain and enjoin Defendant's
5 continuing infringing conduct.

6 29. Finally, Plaintiff is entitled to an order for impounding of all materials
7 used in violation of the Plaintiff's exclusive copyrights.

8
9 WHEREFORE, Plaintiff respectfully requests that the Court:

10 (A) Permanently enjoin each Defendant and all other persons who are in
11 active concert or participation with each Defendant from continuing to infringe
12 Plaintiff's copyrighted work;

13 (B) That an order be entered compelling Defendants to account for all
14 gains, profits and advantages derived by each Defendant by the infringement of
15 Plaintiff's copyright or such damages as to the Court shall appear proper within the
16 provisions of the copyright statutes;

17 (C) That an order be entered establishing a constructive trust on
18 Defendants profits derived from infringement of Plaintiff's copyrighted work;

19 (D) Award Plaintiff statutory damages in the amount of \$150,000 per
20 Defendant, per registered work infringed, pursuant to 17 U.S.C. § 504-(a) and (c),
21 whichever is greater;

22 (E) Award Plaintiff its actual damages and any additional profits of the
23 Defendant pursuant to 17 U.S.C. § 504-(a)-(b);

24 (F) Award Plaintiff its reasonable attorneys' fees and costs pursuant to 17
25 U.S.C. § 505; and

26 ///

27 ///

28 ///

1 (G) Grant Plaintiff any other and further relief this Court deems just and
2 proper.

3
4 Dated: January 21, 2016
5 _____

Farnaes & Lucio, APC

6 By: /Malte Farnaes/
7 _____
8 Malte L.L. Farnaes
9 Attorney for Plaintiff
Cardiff Chamber of Commerce,
Inc., a/k/a Cardiff 101 Main Street
Association

10 **DEMAND FOR JURY TRIAL**

11 PLEASE TAKE NOTICE that Plaintiff in this action, without waiving its objections to
12 subject matter jurisdiction in this action, hereby demands trial by jury pursuant to Federal Rule of
13 Civil Procedure 81(c).
14

15 Dated: January 21, 2016
16 _____

Farnaes & Lucio, APC

17 By: /Malte Farnaes/
18 _____
19 Malte L.L. Farnaes
20 Attorney for Plaintiff
21 Cardiff Chamber of Commerce,
22 Inc., a/k/a Cardiff 101 Main Street
23 Association
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